ANNUAL REPORT

April 1, 2008 – March 31, 2009

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Message from the Chair

As I enter into my fifth year with the Commission, I reflect back on a very busy and productive time. One of the goals of the Commission is fostering and sustaining access to justice for all Yukoners. I am very proud the Commission has this role in our everyday work and more specifically in our dedication to the future in the next stages of law reform. It is the most vulnerable members of our society who often lack access to justice, often because of cost. Human rights commissions across the country are the most effective vehicle available to the poor and disenfranchised to exercise their rights and are an essential mechanism to ensure equality for all.

Law Reform Process

The Yukon Human Rights Commission remained engaged in the law reform process over this past year despite not having adequate staffing and funding levels for this important activity. In order to help improve our human rights system, staff and Commission members volunteered their time. I welcome improvements to the human rights system. An important role of law reform is to keep pace with change, but the process is more than that for me because I remain inspired and want to instill my readiness to reach for the stars. The Yukon can have the most comprehensive and progressive human rights system in this country and even the world, enabling Yukoners to achieve true equality. I envision a law reform process which fully engages the citizens of this territory in an effective, meaningful, informed, and educated manner which goes directly to the core of what it means to improve the quality of life of all Yukoners.

I would like to thank the members of the Select Committee for their time and work over the past year. The next stage of law reform should continue to be an all party and non-partisan, rather than politicized, process.

Shortcoming on Funding Process

A crucial shortcoming of the current legislation is the lack of any provision on how the Commission is funded. Currently, the Commission submits a budget each year to the Department of Justice. The Commission's funding is approximately 1% of the Department's overall budget. The Select Committee on Human Rights recommended that the funding of the Yukon Human Rights Commission be removed from the Department of Justice due to a possible perceived conflict of interest.

The Commission ought to have and maintain a fundamental arm's length relationship from government. In our research and work, some members of the public have reported they do not perceive the Commission as neutral, due to current funding arrangements. The Commission believes its funding should come from the Members' Services Board of the

Legislative Assembly, not the Department of Justice. Furthermore there should be a formula which includes an escalator clause to adjust funding so that it is based on the number of human rights cases in a given year.

As Chair, a disproportionate amount of my time is spent on finances and working with the budget: this is unfortunate because I would like to concentrate on other meaningful roles such as raising the profile of the Commission and engaging in public education, which are essential in eliminating racism and discrimination.

Jurisdictional Concerns

Another key issue raised in the law reform process was the question of jurisdiction. Jurisdiction over human rights is divided between Canada and the provinces and territories. Because the Canadian Constitution gives jurisdiction to Canada over "Indians and Lands Reserved for Indians", the Yukon Human Rights Commission refers complaints against Indian Act bands to the federal Commission, located in Ottawa. There are still three *Indian Act* bands in the Yukon. Often when people hear that YHRC cannot take their complaint, they decide not to go any further. YHRC does take complaints by First Nation people against Yukon government employers and service providers and other Yukon businesses and employers, as these are clearly within our jurisdiction.

But what about the 11 self-governing Yukon First Nations? Some self-governing First Nations have told YHRC that they have "exclusive" power over human rights for their employees and citizens because of the language of Chapter 13 in the Self-Government Agreements here in the Yukon. When YHRC explains this to First Nation citizens who call us asking for help, some are unhappy that their complaint cannot be dealt with by the Yukon Commission or perhaps even the federal Commission. Sometimes they say that leaves them nowhere to turn.

It may be possible to change the *Human Rights Act*, so it has an option similar to the one in the *Ombudsman Act*, which says that a First Nation may choose to have the Ombudsman help by taking and investigating complaints and helping to solve them.

This issue regarding jurisdiction remains unsettled and requires further research and consultation with First Nation governments and collaboration with Aboriginal women's organizations in order to address such essential access to justice issues.

The Second Phase of Law Reform

The Commission intends to play an active role in the next stage of law reform because of its expertise. Commission staff and members use the legislation on a regular and daily basis. The Commission recommends that Phase 2 include further public education and engagement of stakeholders in a "made in Yukon" approach to ensure access to justice and improvement in the quality of life for all Yukoners.

Commission staff and members

The YHRC said farewell to our fellow member of the Commission, Lois Moorcroft this past spring. I would like to thank Lois for her service with the Commission over the past three years. She has provided an abundance of knowledge and experience. Lois came to the Commission with an extensive background in governmental affairs. She provided valuable input and guidance to me as Chair and she was a definite asset to the YHRC.

I would also like to thank Susan Roothman for her contribution to the Commission. She resigned as legal counsel in February 2008, but has continued to work on some of our cases, while we hire a new lawyer. The Commission benefited from Susan's hard work and her background in human rights. YHRC wishes her well in her endeavors in private practice.

After the appointment of Lois Moorcroft expired in mid April 2009, the Commission was left with four Commission members. This has created challenges in achieving quorum in order to conduct YHRC business. There is an immediate need for another appointment in order to meet our operational requirements.

On behalf of the Commission and staff, I present to you this 2008-2009 Annual Report of the Yukon Human Rights Commission.

Melissa Atkinson
Chair

Commission Members in 2008 - 2009

Left to right: Max Rispin, Lois Moorcroft, Melissa Atkinson, Glenis Allen; front: Rick Goodfellow

Work of Commission Members

The Role of a Member of the Commission

Yukoners who are interested in being appointed as volunteer members of the Commission for a three year term apply to the Legislature through the Boards and Committees Secretariat. The Legislature appoints the members of the Commission. Members meet monthly to review investigation reports and the responses to them by the people who have filed complaints and by the people, businesses or other organizations the complaints were filed against.

Under section 21 of the *Act*, after investigation, Commission members must decide to:

a) dismiss the complaint; or
b) refer it to settlement; or if settlement fails
c) refer it to a Board of Adjudication for hearing.

Members do not decide whether or not discrimination occurred. They decide whether there is enough evidence to justify sending the complaint to the next stage of settlement or hearing. If they decide there is not enough evidence, they must dismiss the complaint. The Commission's lawyer advises the members on human rights law.

Members also oversee the administration of the Commission, including hiring the Director, financial planning and oversight, strategic planning and policy development. They also act as spokespersons at public education events. The members decide who will be Chair of the Commission.

MELISSA ATKINSON was appointed in December 2004, and has served as chair since September 2006 to present. She was born and raised in Whitehorse, Yukon. She is a member of the Tr'ondëk Hwëch'in First Nation and is from the Wolf clan. She has a Bachelor of Arts degree in Native Studies and Spanish from Trent University, and received her law degree from the University of Victoria. She is Crown counsel with the Public Prosecution Service of Canada and conducts Criminal Code prosecutions. She is the incoming Past President of the Canadian Bar Association Yukon Executive for 2009-2010. She serves as a member of the Blood Ties Four Directions Centre Board.

GLENIS ALLEN, appointed in December 2007, has lived in the Yukon for over 30 years. She has extensive experience working at the senior management level in both the private and public sector. She has provided consulting services in the human resources field and on human rights issues to a variety of clients including First Nations Governments. She has experience investigating work place issues/complaints, rendering decisions, providing recommendations as required and mediating settlements. She brings a sound knowledge of the Yukon *Human Rights Act* and other labour requirements to the Commission. Ms. Allen is currently a member

of the Drivers Control Board and has served as the Chair of the Employment Standards Board and Vice Chair of the Social Service Council.

RICK GOODFELLOW, Executive Director of Challenge Community Vocational Alternatives, a program that supports the employment of people with disabilities, was appointed in December 2005 and renewed for a second term. He has extensive senior management experience in the public sector, non-government and business sectors. He has served on several committees and boards related to employment, access to services, and communications for persons with disabilities. He has diverse knowledge and background with respect to the rights of persons with disabilities and has provided training and developed policy in this area. He has recently taken part in public discussions regarding the ratification of the UN *Convention on the Rights of Persons with Disabilities.*

LOIS MOORCROFT was appointed in April 2006 and completed her term in April 2009. She brought a wealth of experience and knowledge in dealing with issues related to the concerns of women, children, seniors, First Nations citizens and working people. She has served on the Yukon Employment Standards Board, Yukon Electoral District Boundaries Commission, and held executive positions on the Yukon College Employees Union and Yukon Federation of Labour. She also has volunteer experience with the Yukon Status of Women Council, Liard Aboriginal Women's Society, and Victoria Faulkner Women's Centre. Ms. Moorcroft was M.L.A. for Mount Lorne 1992-2000 and was the Minister of Justice, Education and the Women's Directorate with the Government of Yukon.

MAX RISPIN, appointed in December 2006, brings extensive experience and knowledge of northern communities to his new role. Originally from New Zealand, Mr. Rispin has spent 40 plus years in NWT, Nunavut and Yukon as an educator in elementary, secondary and adult education. He has also served as the coordinator of Emergency Measures Organization and Senior Justice of the Peace and Coroner in N.W.T. for over 25 years. Currently he is active in Yukon Crime Stoppers, Yukon Health and Social Services Council, St. John Ambulance and is the National Vice President (North) of the Association of Public Service Alliance Retirees.

Message from the Director

This year, the Commission served about 8,845 people in a variety of ways:

- approximately 300 people attended education or policy development sessions as part of the Commission's prevention work;
- approximately 3,675 viewed our displays and attended other public events such as concerts and films celebrating the 60th anniversary of the Universal Declaration of Human Rights coordinated by Amnesty International's Global Arts Jam in partnership with the Commission;

- 278 people sought advice or referral to the federal Commission or other agencies or resources within the community;
- approximately 115 filed, responded to, or provided information as witnesses in human rights complaints.
- Also 4,477 people visited our website, particularly during the law reform process throughout the summer and fall of 2008.

Numbers are Up

The Commission continues to be much busier than it was in the 90's. One reason is that more complaints are being filed each year. This year we opened 41 new complaints, much higher than the average number (25) per year in the 90's [see figure 7] and prior, but consistent with the 40 opened last year.

However, only 38 complaint files were completed this year. Although this is considerably more than the previous year's 28, and also includes matters in court or at hearing which often take several years to complete, it is not enough to achieve our goal of completing files in under a year, on average. By contrast, in 2005-06, 44 files were completed – however, that year the Commission had the benefit of extra staff with a Director of Administration and Finance at .4 Full Time Equivalents (FTE) and a Director of Human Rights at .8 FTE. Due to our funding in the several years since, the Commission has cut back to only myself as part-time Director of Human Rights at .8 FTE, responsible for overall administration of the *Act*, as well as solely responsible for summary dismissal and informal resolution work. Unfortunately, the Commission cannot do more work with less staff. So this year ended with 63 open cases, the highest in the Commission's history. This number represents real people waiting for our process to finish.

More Prevention, Outreach, and Law Reform Efforts

Another reason our workload is up is that we are doing far more extensive public education, outreach and policy development work, primarily with employers, strategically targeted because by far the largest numbers of complaints are in the employment area.

Law reform has also been a significant part of our work this year, with visits to some Yukon communities thanks to funding from the Yukon Law Foundation: without it, the Commission could not have attended the Dawson City, Marsh Lake, Tagish, Teslin, and Watson Lake Select Committee meetings this past fall, consulting with Yukoners on improving our human rights law. The Commission put a significant amount of its resources into this work because it not only presented an opportunity to improve our human rights system but also provided a chance to educate people about how the current *Act* works and doesn't work. This work included providing information on where the gaps in protection are as well as ways to address these problems and modernize our law, which is over twenty years old.

This work culminated in Bill 71, *An Act to Amend the Human Rights Act,* tabled in the Legislature in the spring of 2009. Some key amendments proposed to our *Human Rights Act*

included time limit for filing complaints, as well as mechanisms to streamline the Commission's investigation and hearing work and to raise the threshold for complaints from "belief' to "reasonable grounds". These are welcome and needed improvements and a good first step in implementing the Select Committee on Human Rights' recommendations for law reform. We look forward to a more extensive second phase for law reform in 2009-10, as promised by the Minister of Justice in the Legislature, and plan to continue to be part of this important work whether or not we have extra resources to do it. If we do not, something will have to give and this will likely again be the speed with which we complete complaints, as in 2007-08 (see last year's annual report on how an important but extra project like law reform can slow the Commission's timelines on other work.)

Changes to our Funding

This year for the first time, the Commission signed a contribution agreement, due to changes in the government's interpretation of which organizations require legislative grants and which do not. The Commission explained to the Minister of Justice that it affects our independence to be funded this way instead of through the Legislature directly. However, because there is nothing in the current *Act* about how the Commission is funded, both Department of Justice and Finance officials advised the Commission that its funding must come through a contribution agreement, with a one-year moratorium on changing from an annual block grant to funding by quarterly installments. This switch to installment funding will mean that for the 2009-10 budget year, the Commission will have much less flexibility month to month to meet its expenses, which are not all evenly distributed monthly but vary throughout the year, particularly depending on costs for hearings and court work which can be very expensive and often difficult to project and control.

Thank You to our Volunteers

In the summer of 2008, University of Victoria Law graduate, Rachel Drummond, volunteered a month of her time to work on an investigation as part of learning more about administrative and human rights law and giving back to her community. Jennifer Greene was a practicum placement from the University of Waterloo during the month of June and did research on landlord and tenant hearings in the court system as part of the Commission's work towards making housing as a human right a reality for Yukoners. Blake Rogers, a Whitehorse educator, ably helped organize International Human Rights Day events in December. In addition, Luke Sugden, a Yukon College student, volunteered at the Commission a day a week, helping us with statistical research.

The Work of the Commission

MESSAGE FROM LYNN PIGAGE – INTAKE OFFICER

"If you phone or drop into the Commission my job is to answer your questions about your rights and to explain the human rights process. You might need information if you are an employee, an employer, a tenant, a landlord or someone giving or receiving a service. I might refer you somewhere else, like Law Line, if your situation doesn't fit within our Act. I write up inquiries to have our lawyer or Director decide if your situation fits within the Yukon Human Rights Act. The next step is an "intake" which is when I gather all the details about the discrimination that you allege happened including who, what, where and when. The information forms a complaint which is then given to the Director of Human Rights, Heather MacFadgen, to perform a preliminary investigation to ensure your complaint is within the time limit, within the Commission's authority and is not 'frivolous or vexatious'. "

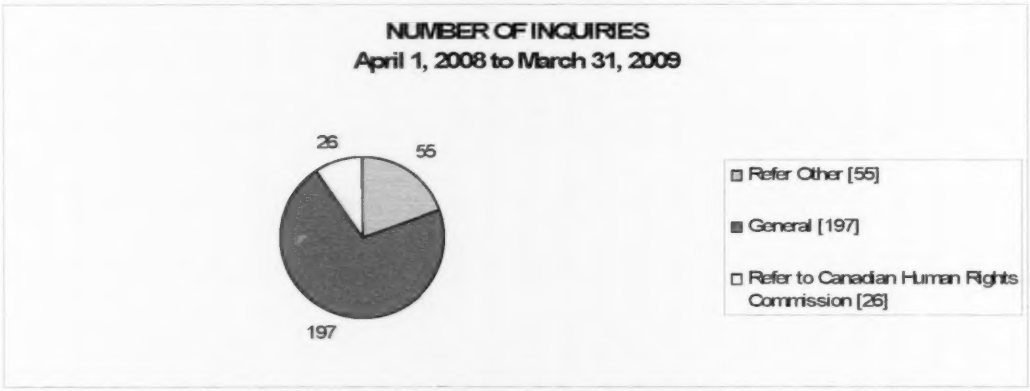

Figure 1: In 2008-2009, the Commission received 278 inquiries, 55 of which were referred to other agencies or organizations and 26 to the Canadian Human Rights Commission. The rest received advice and help on how to deal with their human rights concerns or issues. Often employees and sometimes employers and service providers call and ask what they should do about a human rights issue that they are dealing with. Commission staff provide confidential advice to try and solve the problem and to prevent discrimination.

MESSAGE FROM GEOFFREY EDWARDS, INVESTIGATOR

"Once a complaint has been accepted by the Director, it is forwarded to settlement or investigation. If the parties can't agree or don't want to go through a settlement process, I am assigned to investigate the complaint. The fact that a complaint is accepted by the YHRC does not mean the YHRC agrees that the person has been discriminated against or that the person the complaint is against has done something wrong. That's why the investigation process is confidential.

For every complaint, I interview witnesses, collect documents and other evidence; research human rights case law; and organize all of this

information into an Investigation Report. I must be neutral, which means that I gather all relevant information that could prove or disprove the allegations made in the complaint.

The Investigation Report is read by the Commission members who decide whether to dismiss the complaint or forward it for settlement or to a Board of Adjudication hearing if settlement attempts are unsuccessful. Sometimes people who file complaints ask me whether I believe them or whether I think they have a good case. I tell them that it is the Commission members' job to make that decision: mine is to present the members with all the relevant facts.

Because of the limited number of staff, I also help with intake on complaints, answering phones and disclosing investigation reports to the parties."

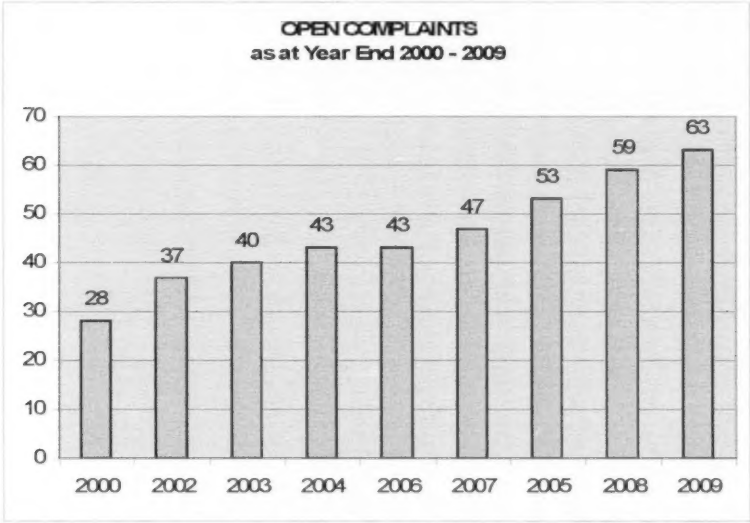

Figure 2: The chart shows the number of open complaints at the end of each fiscal year from 2000 to 2009. At the end of this fiscal year, there were 63 open complaints. These are complaints that the Commission is still dealing with, including those at hearing or court, at the end of the fiscal year. While there are more cases open since 2002, there are also more new complaints being filed each year than in years prior to 2002.

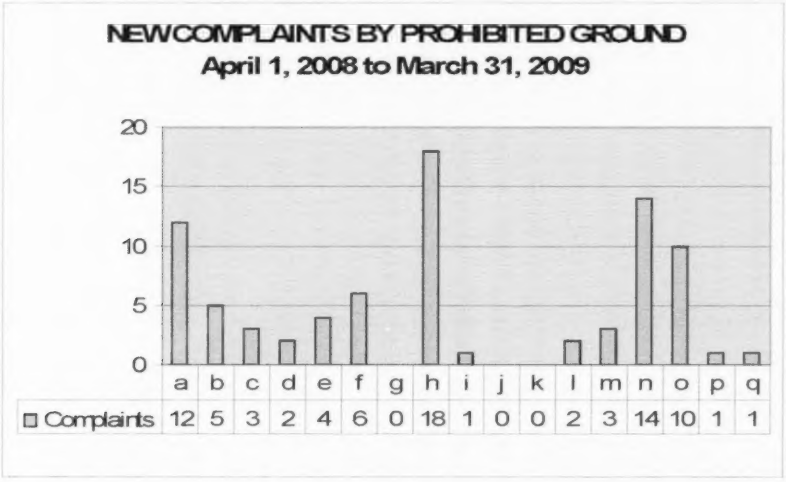
NEW COMPLAINTS BY PROHIBITED GROUND
April 1, 2008 to March 31, 2009
20
15
10
5
0
a b c d e f g h i j k l m n o p q
Complaints 12 5 3 2 4 6 0 18 1 0 0 2 3 14 10 1 1

Figure 3

Column	Number of Complaints	Prohibited Ground of Discrimination
a	12	Ancestry, including colour and race
b	5	National Origin
c	3	Ethnic or Linguistic background
d	2	Religion or Creed
e	4	Age
f	6	Sex, including pregnancy
g	0	Sexual orientation
h	18	Physical or Mental Disability
i	1	Criminal Charges or Record
j	0	Political Belief
k	0	Marital or Family Status
l	2	Source of Income
m	3	Actual or Presumed Association
n	14	Duty to Accommodate
o	10	Sexual Harassment/Harassment
p	1	Systemic Discrimination
q	1	Employers responsible for employee conduct (see Sec. 35 in the *Act*

Figure 4

Figure 3 and Figure 4 show complaints received from April 1, 2008 to March 31, 2009 by personal characteristic or prohibited ground, which are listed in the table of Figure 4. Some cases are filed on more than one ground. The graph shows that the largest number of complaints made this year continue to be on the basis of physical and mental disability and the duty to accommodate.

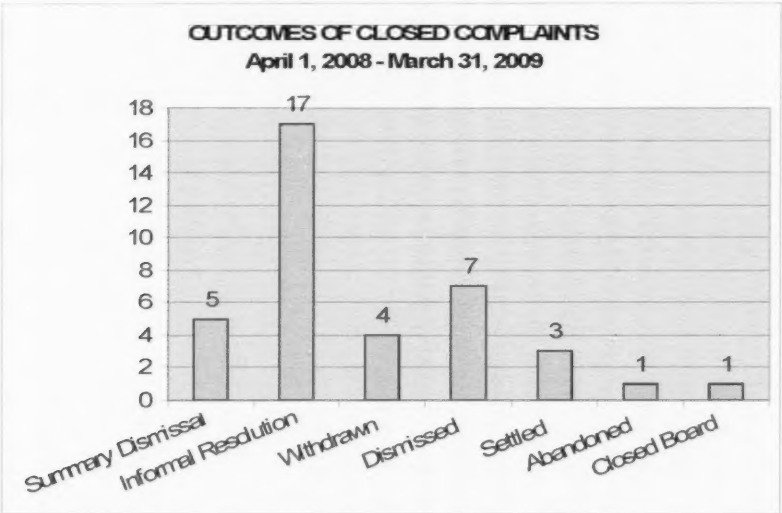

Figure 5

Figure 5: Thirty-eight complaints were closed by the end of the fiscal year. Five of these were summary dismissals. These are cases where the Director dismisses or does not accept a complaint after a preliminary investigation because the complaint is either not within jurisdiction or the Commission's area of responsibility, or is "frivolous" or "vexatious", or is beyond the six month time limit.

For example, one case was dismissed because it was considered vexatious by the Director, using her powers under Regulation 5. Under section 20 of the *Act,* the Commission is not required to investigate a complaint if it is "vexatious". Although the *Act* does not define this word, human rights cases have found that it means a complaint that aims to harass, annoy or drain the resources of the person the complaint is made against. This is because the purpose of human right law is remedial – human rights proceedings are not meant to punish people or to retaliate against them or to get revenge.

In this particular summary dismissal case, the Complainant had made two complaints against his employer and his co-worker. These complaints were made after the co-worker and another worker had made internal complaints against the Complainant. The internal complaints were found to be substantiated and discipline had been imposed on the Complainant as a result. In addition to the timing of the complaint to the Commission, there was written and oral evidence (some of it provided in the Complainant's statements to the Commission) that the Complainant wanted to get even with the people who had complained against him such as : " If you get me, I will get you back, whatever it takes" and " I want them to pay . . . they made my life hell . . . I'm going to give them hell back." Also, there was evidence, much of it admitted by the Complainant himself that he had made sexist, homophobic, insulting and disrespectful comments to the people with whom he worked. In a federal human rights case, a decision-maker had this to say about a Complainant's behaviour: "The obligation to respect the value and dignity of the person is reciprocal, and I think something like the doctrine of 'clean hands' must apply in the field of human rights, at least in the context of personal complaints. The

reputation of the human rights system would be undermined by a policy that rewarded complainants who violate the fundamental rights of other employees."

Seventeen cases were informally resolved with the cooperation of the parties and the help of the Director before a full investigation. See some summaries of informal resolutions in the next section of this report titled "Informal Resolutions – Providing Remedies".

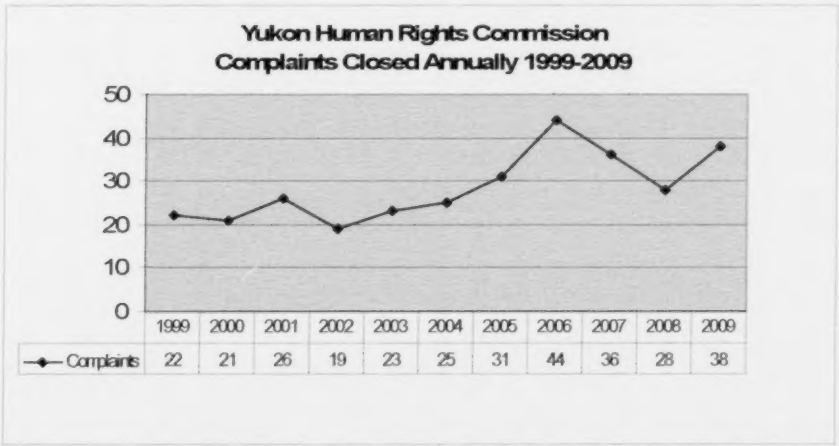

Figure 6

Figure 6: Thirty-eight complaints were finished this fiscal year. This is higher than last year, but still leaves many people waiting for resolution of their cases. Court cases (appeals and judicial review) as well as hearings often add a year or more to the time it takes to close a case. At the end of this year, 8 of the 63 cases were either at hearing or in court.

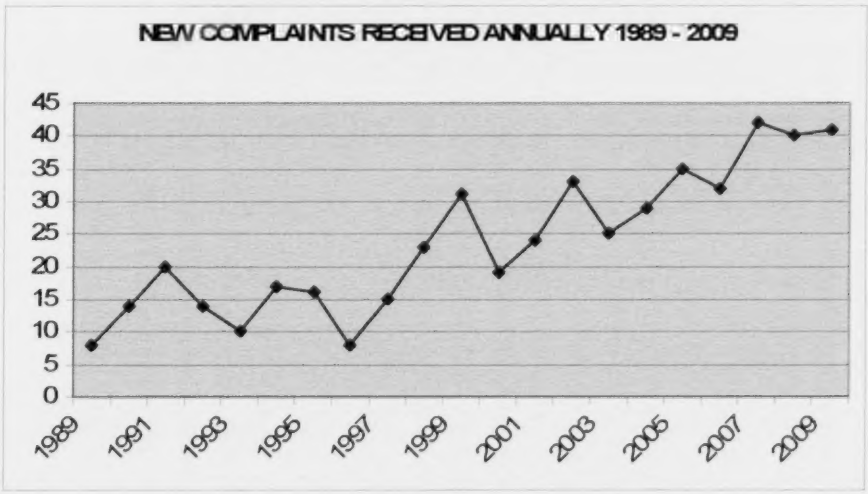

Figure 7

Figure 7: Shows a total of 41 new complaints filed between April 1, 2008 and March 31, 2009. The figure is consistent with much higher numbers of new complaints in the past almost decade, as compared to earlier years. However, as this workload has gone up, the

Commission has only increased the staff to deal with complaints by 18%, due to funding restrictions. Both the lawyer who does the disposition, settlement, hearing and court work, and the Director who does the preliminary investigation, informal resolution, and summary dismissal work are part-time positions [both .8 FTE].

Informal Resolutions – Providing Remedies

The Commission's process is focused on helping people find remedies and solutions and not on punishing anyone. So the Commission makes every effort to help people settle complaints before investigation, if both parties are willing and as resources permit. The Director can recommend to both parties ways to settle the complaint in keeping with the purposes of the *Act.* This year, in 45% of the cases closed, parties were able to cooperate to achieve a satisfactory settlement with the help of the Commission staff. The Commission saved time, resources, and the cost of a lengthy investigation by settling these complaints before an investigation took place. The amount of time to settle a case will vary, but can take 20 hours or more to meet with the people involved, research human rights law and drafting agreements.

Here are some examples of remedies as part of informally resolving complaints this year. Because these settlements occurred before a full investigation, the Commission does not provide identifying information about either party.

Physical disability/Duty to Accommodate - Employment - The Complainant had recent surgery, which resulted in physical limitations with respect to lifting heavy weight. The Complainant alleged that his physical disability was not accommodated by lighter duties and assistance with lifting. The Respondent agreed that management would receive training on the accommodation of disabilities in the workplace.

Sex/Sexual Harassment - Employment – The Complainant, who worked in the service industry, alleged that she was sexually harassed by her employer including inappropriate comments and touching. The Respondent paid the Complainant $1,500 representing injury to dignity, feelings or self-respect, agreed to develop and post a sexual harassment policy on the staff room bulletin board and to provide a written apology for the behaviour to the Complainant. The Commission's Public Education Specialist provided assistance in developing a harassment-free workplace policy.

Physical Disability/Duty to Accommodate - Employment/Contract – The Complainant had a physical disability (asthma) that he alleged required the accommodation in the form of private accommodation (unshared room) while working and permission to clean his own room and use his own cleaning products. Due to operational changes, the Complainant was required to share accommodations, and he alleged when he refused, he was fired. The Respondent alleged that he quit, so there was a dispute about what had actually happened. The

Respondent agreed to pay the Complainant $5,000 representing injury to dignity, feelings or self-respect and $2,500 less any statutory deductions representing loss of wages.

Physical disability/Duty to Accommodate - Employment - The Complainant alleged she developed a work-related disability while in the work environment that required an accommodation that she alleged was not provided. She alleged that she developed an allergic reaction to chemicals used in the workplace while the employer was doing renovations. She complained that she was fired when she was ordered by the doctor to take time off to provide some relief from the fumes. The Respondent agreed to pay the Complainant $1,500 representing injury to dignity, feelings or self-respect and to have its management and staff attend a public education session on human rights and the duty to accommodate.

Physical disability/Duty to Accommodate - Employment – The Complainant has a physical disability (diabetes) that requires some accommodation in the workplace and alleged that the Respondent did not accommodate his disability to the point of undue hardship. He was fired after a number of absences from work, some of which were due to his disability, and a day after he alleges he brought his employer a note from his doctor saying he needed time off work due to his medical condition and he inquired about short term disability leave. The Respondent agreed to pay the Complainant $4,000 representing loss of wages and $5,000 representing injury to dignity, feelings or self-respect and to attend a public education session on human rights and the duty to accommodate disabilities in the workplace.

Perceived Mental Disability - Employment – The Complainant alleged she was perceived as having a mental disability (mental illness) by her employer and was harassed and ultimately dismissed for this reason. She alleged there were comments in the workplace about her being "flaky' and "different" and "paranoid". She said she had passed her probation period and that any problems with her performance were either not her fault or not dealt with according to workplace policy. Her supervisor had written a letter to management saying that she was a good employee and she had not been treated fairly. The Respondent said she was dismissed for performance reasons, so there was a dispute about what had happened and the reasons for dismissal. The Respondent agreed to pay the Complainant two month's worth of wages, provide a reference letter and letter of apology and attend an education session on human rights in the workplace.

National origin/Sex/Presumed mental disability/Harassment - Employment– The Complainant who worked in the service industry, filed a complaint against her supervisor and employer alleging harassment in the form of unwelcome race-based and sexual comments to her. She did not want compensation, but rather an apology and harassment training and policy work for the workplace. The employer agreed to provide a written apology to the Complainant, to develop a harassment policy for the workplace and to attend an education session on human rights in the workplace. The Commission's Public Education Specialist provided assistance in developing the policy and in offering an education session to the employer.

Settlements – Providing Remedies

Message from Susan Roothman, Legal Counsel

"I am the lawyer for the Commission. My main task is to make sure that the Commission knows about and considers the applicable and up to date human rights law when a decision is being made. This applies to all levels of decision making by the Commission's staff and the Commission members. I assist staff and Commission members on each and every complaint from the first inquiry, through the investigation to the disposition of the complaint. When a complaint is referred for settlement by the Commission members, I assist the parties to reach a settlement.

I also represent the Commission at the Board of Adjudication and at Court: that is, during hearings before the Board and during applications, judicial reviews and appeals in the Supreme Court of Yukon."

Susan Roothman resigned in February 2009 to go into private practice, but has continued to work on cases at hearing or on appeal, while the Commission searches for a new lawyer to replace her.

Three settlements were reached, but remain confidential.

Board of Adjudication Decisions

If the complaint can't be settled with the agreement of the parties, it will be referred to the Board of Adjudication. The Board is entirely independent of the Commission and of government. If the Board finds discrimination occurred it can make orders to provide remedies to discrimination. Once a complaint comes before the Board, it becomes a matter of public record. Decisions of the Board may be appealed by either party to the Supreme Court of the Yukon Territory.

McBee (Molloy) v. Government of Yukon – This is a case about discrimination in the workplace on the basis of marital or family status. Ms. Molloy, the Complainant, was employed by the Public Service Commission of the Government of Yukon. The Complainant's relationship with her common-law spouse became abusive and the Complainant spoke about this with her supervisor. The Complainant's spouse was attempting to establish himself in the Yukon as a facilitator specializing in teambuilding. The supervisor had told the Complainant that if she wished to disseminate information about her spouse's business, that information must be turned over to a co-worker for dissemination to avoid the perception of conflict of interest.

As part of her job duties, the Complainant was to develop a Customer Service training program for employees in a different government department, using another organization to deliver the training. She provided the name of her spouse to the relevant organization and disclosed that he was her spouse. She did not advise her supervisor that she had provided her

spouse's name as a possible facilitator, as she knew that her supervisor did not support using his services. Her spouse was hired to conduct the training program. As a result of fears expressed by a number of female employees scheduled to participate in the training program based on the Complainant's spouse's criminal record and reputation, the program was abruptly cancelled. The Respondent conducted an investigation into the Complainant's involvement with the contract with her spouse. Following the investigation, the Government terminated the Complainant's employment, alleging breach of the Conflict of Interest Policy, insubordination and breach of trust.

Ms. Molloy complained that the Respondent (Government of Yukon) had discriminated against her on the basis of marital or family status in connection with her employment by firing her because of her association with her spouse. The Board of Adjudication found that the Complainant was subjected to discrimination based on her marital status and that this discrimination was, "at least in part," a factor in the termination of her employment. The majority of the Board found that the government placed the Complainant at risk in her relationship and stated that, "[t]he impact of spousal abuse on an employee at the workplace is a situation that cannot be ignored by the employer." The Board ordered the Government "to investigate its role and its ability to ensure that no employee is put at risk of personal safety, co-worker safety and the potential for further spousal abuse arising from an employment situation."

The Board also ordered that the Commission review the findings of this investigation as well as a planned prevention strategy within six months of the date of the decision. The Board also ordered the Government to pay the hearing costs for the Commission; however, because Ms. Molloy did not fully cooperate in the adjudication of her Complaint and refused to return to complete her cross-examination by the Respondent, the Board made no award to the Complainant. The Respondents have appealed the Board's decision, and the Complainant has cross-appealed.

Hayes v. Yukon College – This is a case about physical disability and the duty to accommodate in employment. Mr. Hayes, the Complainant, was a computer technician at the College. He had Hepatitis C and had been off work on long-term disability benefits for over two years waiting for a liver transplant. Shortly after he received his transplant, but before he had recovered, the College dismissed him because of "operational requirements". He complained that the College, the Respondent, had not accommodated his disability to the point of undue hardship when they did not hold his job for him until he was able to return to work. The Board of Adjudication found the Complainant had experienced discrimination and ordered the Respondent to reinstate him at full salary "forthwith" and to develop an effective return to work plan within 30 days. It also ordered the College to pay the hearing costs for the Complainant and the Commission. However, no damages were ordered for injury to dignity or loss of wages. Lastly, the Board ordered the College to institute a policy "to address the systemic risks related to employee termination and disability" for review and approval by the Commission.

In its decision, the Board found that after the Complainant's medical leave had begun, the College experienced difficulties temporarily staffing his position. There was also evidence that inadequate or untrained support led to operational challenges and complaints from other staff. At the time the College dismissed the Complainant, it had hired a capable temporary replacement who had indicated he would seek permanent employment elsewhere if he remained a temporary employee. However, the Board did not find in these circumstances that it would be undue hardship for the College to provide further accommodation beyond two years because there was a good prospect the Complainant could return to work within months of the decision to dismiss. In addition, the Board found that the College's practice of minimizing its involvement with the co-management of the employee's return to work with the insurer meant that it avoided its responsibility to investigate the status of an employee absent due to disability by contacting healthcare providers, the insurer or the employee himself. In this case, the Complainant had provided consent to release medical information but the College made little effort to get any further information about the prognosis for recovery including when and if the Complainant could return to work.

This decision shows that an employer should not rely only on limited information from a disability insurer in coming to a decision on whether or not to dismiss an employee because of what is often called "innocent absenteeism" due to disability. It also shows that an employer should be able to show it investigated alternatives to dismissal before coming to that decision, such as consideration of a return to work in 6 to 12 months on a part-time basis while the Complainant recovered. The Board did consider a recent case from the Supreme Court of Canada called *Hydro-Quebec. v. Syndicat des employees de techniques professionnalles et de bureau d'Hydro-Quebec.* This decision says that an employer will have satisfied the requirements for accommodation when an employee remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her. The Board decided that the *Hydro-Quebec* case did not apply to Mr. Hayes case because the evidence showed that he could be and appeared to be in a position to return to work with few if any work limitations within months after his transplant operation.

(The *Hayes* case was under appeal at the end of the year, but the Commission was providing help to the parties to try and settle it.)

Public Education Activities

Message from Lillian Nakamura Maguire, Public Education Specialist

"The Commission's education work is designed to promote understanding of human rights and responsibilities and to prevent discrimination. I design, deliver and evaluate educational workshops and presentations and provide consultation services to employers, employees, students, union

members, teachers, business owners, landlords and interested members of the public. Developing educational materials, updating our website, coordinating the publication of the annual report, doing research and writing reports, communicating with the media and working with community partners are other aspects of the work that I do. There is no end to the variety of groups and content with which I work. . . all packed into a 21 hour per week schedule."

Here are highlights of the educational activities undertaken in 2008 – 2009:

- Release of "Report on Human Rights of Women and Girls in Yukon", a project funded through the Women's Equality Funding of the Women's Directorate, which collected the views of 255 women and girls. This research was started in 2007/08 fiscal year.
- In conjunction with Bringing Youth Toward Equality (BYTE) and with financial assistance from the Yukon Employees Union, YHRC gathered the views of youth and promoted a youth human rights blog from April to June, in which we reached approximately 142 youth. The survey results showed that 40% of youth knew nothing about the Yukon *Human Rights Act.*
- YHRC staff and members attended public meetings of the Select Committee on Human Rights that were gathering input about reform to the human rights legislation, in Dawson City, Watson Lake, Teslin and Marsh Lake. The Commission submitted its report and recommendations to the Select Committee, many of which were included as their final recommendations to the Legislative Assembly.
- Approximately 200 people attended the 60th anniversary celebration of the Universal Declaration of Human Rights event on December 10th. The local Amnesty committee partnered with many community groups, including YHRC to organize a series of community arts events leading up to Human Rights Day, which drew about 3300 people in total.
- Approximately 75 people attended the presentation of the Känächá Scrapbook project (stories and photos of residential school experience) for the March 21st International Day for the Elimination of Racial Discrimination co-sponsored with Tr'ondëk Hwëch'in Hän Nation and Yukon College.
- Fifteen workshops and presentations on human rights, harassment-free workplaces, policy development and the duty to accommodate were offered to about 250 people from a wide variety of audiences – high school and college students, employers and business operators, volunteer sector, people with disabilities, union committees and government.
- Seven training sessions were offered to individuals, employers and employees as part of settlement agreements of human rights complaints.

THE YUKON HUMAN RIGHTS COMMISSION

FINANCIAL STATEMENTS

MARCH 31, 2009
(unaudited)

Review Engagement Report

Statement of Financial Position

Statement of Operations

Statement of Changes in Net Assets

Statement of Cash Flows

Notes to Financial Statements

J. Kim Tanner, C.A., Ltd.
Chartered Accountant

REVIEW ENGAGEMENT REPORT

To the Commissioners of The Yukon Human Rights Commission:

I have reviewed the statement of financial position of The Yukon Human Rights Commission as at March 31, 2009 and the statements of operations, changes in net assets and cash flows for the year then ended. My review was made in accordance with Canadian generally accepted standards for review engagements and accordingly consisted primarily of enquiry, analytical procedures and discussions related to information supplied to me by the Commission.

A review does not constitute an audit and consequently I do not express an audit opinion on these financial statements.

Based on my review, nothing has come to my attention that causes me to believe that these financial statements are not, in all material respects, in accordance with Canadian generally accepted accounting principles. In addition, nothing has come to my attention that causes me to believe that operations for the year are not, in all material respects, in accordance with the terms of the contribution agreements entered into with the Government of Yukon during the year.

CHARTERED ACCOUNTANT

Whitehorse, Yukon
May 14, 2009

505 Jarvis Street, Whitehorse, Yukon, Y1A 2H7
PH: (867) 667-4700 FAX: (867) 667-4439

THE YUKON HUMAN RIGHTS COMMISSION
STATEMENT OF FINANCIAL POSITION
AS AT MARCH 31, 2009
(unaudited)

	2009	2008
ASSETS		
CURRENT ASSETS		
Cash	$ 48,897	$ 22,187
Accounts receivable	3,245	69,000
Prepaid expenses	2,165	2,748
	54,307	93,935
EQUIPMENT REPLACEMENT FUND (note 2b, 3)	6,500	6,500
EQUIPMENT (note 2a, 4)	15,268	22,955
	$ 76,075	$ 123,390
LIABILITIES		
CURRENT LIABILITIES		
Accounts payable and accrued liabilities	$ 7,047	$ 3,512
Wages and employee benefits payable	40,120	46,210
Due to Equipment Reserve Fund	4,500	6,500
	51,667	56,222
NET ASSETS		
INVESTMENT IN CAPITAL ASSETS (note 2a, 3)	15,268	22,955
EQUIPMENT REPLACEMENT FUND (note 2b)	6,500	6,500
UNRESTRICTED NET ASSETS	2,640	37,713
	24,408	67,168
	$ 76,075	$ 123,390

APPROVED BY:

Commissioner

Commissioner

THE YUKON HUMAN RIGHTS COMMISSION
STATEMENT OF OPERATIONS
FOR THE YEAR ENDED MARCH 31, 2009
(unaudited)

	2009	2008
REVENUE		
Government of Yukon grants for operations	$ 478,000	$ 575,000
Government of Yukon - Women's Equality	-	20,000
Interest income	3,352	5,715
Donations and other income	3,143	3,970
Yukon Law Foundation grant	4,758	10,325
	489,253	615,010
EXPENSES		
Administration		
Annual report	1,650	1,053
Dues and membership	1,226	995
Equipment repairs and maintenance	150	1,488
Interest and bank charges	131	212
Loss on disposal of asset	-	1,250
Office supplies	5,308	7,426
Postage, freight and deliveries	901	718
Professional fees	3,911	3,816
Subscriptions, publications and films	3,850	2,967
Telephone and internet	8,967	7,291
	26,094	27,216
Staff		
Employee travel and training	4,526	1,328
Employee liability insurance	1,965	1,433
Recruitment costs	478	-
Wages and employee benefits	376,117	378,378
	383,086	381,139
Commission		
Commissioner honorariums	22,400	19,800
Board liability insurance	5,800	5,800
Commissioner training	1,784	1,538
Commissioner meetings and hospitality	2,494	489
	32,478	27,627
Public Education		
WCB Grant - Harassment Workshops/YDEC	2,897	1,946
Law Foundation Grant - Law Reform	3,039	-
Law Foundation Grant - Publications	(401)	4,926
Law Foundation Grant - Accomodation Workshop	-	10,129
Women's Equality Project	-	20,017
YEU Partner - Youth Blog	1,288	638
December 10 and March 21 Celebrations	1,376	894
Website and print materials	1,583	361
	9,782	38,911

...continued

THE YUKON HUMAN RIGHTS COMMISSION

STATEMENT OF OPERATIONS (continued)

FOR THE YEAR ENDED MARCH 31, 2009
(unaudited)

	2009	2008
Complaints Management		
Appeal Court Costs	$ 14,652	$ -
Legal services	825	-
Case investigation	4,078	3,090
Hearing costs	13,558	7,592
	33,113	10,682
Operational		
Insurance	1,598	1,598
Janitorial	1,175	1,300
Rent	37,000	35,083
	39,773	37,981
	524,326	523,556
EXCESS (SHORTAGE) OF REVENUE OVER EXPENSES FOR THE YEAR	$ (35,073)	$ 91,454

THE YUKON HUMAN RIGHTS COMMISSION

STATEMENT OF CHANGES IN NET ASSETS

FOR THE YEAR ENDED MARCH 31, 2009
(unaudited)

	Equipment Replacement Fund	Investment in Capital Assets	Unrestricted Net Assets	Net 2009	Net 2008
BALANCE, BEGINNING OF YEAR	$ 6,500	$ 22,955	$ 37,713	$ 67,168	$ (17,172)
Excess (deficiency) of revenue over expenses in year	-	-	(35,073)	(35,073)	91,454
Additions(disposal) of capital assets in year	-	-	-	-	-
Amortization of capital assets in year	-	(7,687)	-	(7,687)	(7,114)
BALANCE AT END OF YEAR	$ 6,500	$ 15,268	$ 2,640	$ 24,408	$ 67,168

THE YUKON HUMAN RIGHTS COMMISSION

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED MARCH 31, 2009
(unaudited)

	2009	2008
CASH PROVIDED BY (USED FOR) OPERATIONS		
Cash received from Government of Yukon	$ 547,000	$ 526,000
Cash received from Yukon Law Foundation	4,758	10,325
Other cash received for operations	-	4,947
Cash paid out for wages and benefits	(382,207)	(370,136)
Cash paid out for other operational costs	(144,193)	(147,690)
	25,358	23,446
CASH PROVIDED BY (USED FOR) FINANCING AND INVESTMENT		
Funds borrowed from(repaid to) Equipment Replacement Fund	(2,000)	1,333
Funds from Equipment Replacement Fund used to purchase capital assets	-	13,500
Proceeds from (purchase of) capital assets	-	(13,500)
Interest income received on term deposits and savings	3,352	5,715
	1,352	7,048
INCREASE (DECREASE) IN CASH FOR THE YEAR	26,710	30,494
CASH AT BEGINNING OF YEAR	22,187	(8,307)
CASH AT END OF YEAR	$ 48,897	$ 22,187

THE YUKON HUMAN RIGHTS COMMISSION

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED MARCH 31, 2009
(unaudited)

1. PURPOSE OF THE ORGANIZATION

The Yukon Human Rights Commission is a Yukon non-profit organization created to investigate and resolve allegations of human rights abuse in the Yukon. It is an organization created and funded by the Government of Yukon to administer the Human Rights Act.

2. SIGNIFICANT ACCOUNTING POLICIES

a) Amortization

Amortization is provided at rates sufficient to amortize the cost over the estimated useful lives of the equipment. Equipment is amortized using the declining balance method at the rates set out in note 4.

Current year amortization totals $7,687 ($7,114 in 2008).

The Investment in Capital Assets represents the total amortized capital assets of the Commission.

b) Equipment Replacement Fund

The Commission established an Equipment Replacement Fund in fiscal 2004 to help cover the costs of future equipment replacement. Fund monies may only be used for major new equipment purchases and any use of these funds must be approved in advance by the Commissioners. The Commission determines any additions to this fund annually.

The Equipment Replacement Fund is supposed to be held in a guaranteed investment certificate. Interest earned on this fund is not added to the fund but used for general Commission activities. See note 3 for further details.

c) Revenue Recognition

The Yukon Human Rights Commission follows the deferral method of accounting for contributions. Restricted contributions are recognized as revenue in the year in which the related expenses are incurred. Unrestricted contributions are recognized as revenue when received or receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

d) Donated Materials

Donated capital assets and materials are recorded at estimated fair market value with a corresponding amount of revenue recorded as "Donations in kind".

3. EQUIPMENT RESERVE FUND

The equipment reserve fund consists of:

	2009	2008
Guaranteed Investment Certificate	$ 2,000	$ -
Monies loaned to General Fund from the Equipment Reserve Fund, to be repaid as soon as possible.	4,500	6,500
	$ 6,500	$ 6,500

4. EQUIPMENT

	2009				2008
	Rate	Cost	Accumulated Amortization	Net	Net
Furniture & equipment	20%	$ 57,572	$ 50,466	$ 7,106	$ 8,883
Computer equipment	30%	43,236	41,264	1,972	2,817
Computer equipment	45%	19,273	13,083	6,190	11,255
		$ 120,081	$ 104,813	$ 15,268	$ 22,955

5. FINANCIAL INSTRUMENTS

The Yukon Human Rights Commission's financial instruments consist of cash, accounts receivable, accounts payable, and deferred revenue. Unless otherwise noted, it is the Commissioner's opinion that the Yukon Human Rights Commission is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair values of these financial instruments approximate their carrying values, unless otherwise noted.

6. MEASUREMENT UNCERTAINTY

The preparation of financial statements in accordance with generally accepted accounting principles requires management to make assumptions and estimates that have an effect on the reported amount of assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the period. Actual results could be different from those estimates.

7. ECONOMIC DEPENDENCE

The Commission is economically dependent on the Government of Yukon Territory as substantially all operating revenue comes from this source.

8. LEASE AGREEMENT

The Commission has a lease agreement for office space which expires in November 2012. Rental payments of $3,083.33 are due monthly under this agreement until December 2010, when the payments increase to $3,291.66 per month.